United States Court of Appeals

for the Second Circuit

BRIEF FOR APPELLEE

[CORRECTED COPY]

77-1463

To be argued by
LAWRENCE B. PEDOWITZ

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 77-1463

UNITED STATES OF AMERICA,
Appellee,

—v.—

PASCHAL DEMAURO,
Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR THE UNITED STATES OF AMERICA

ROBERT B. FISKE, JR.,
United States Attorney for the
Southern District of New York,
Attorney for the United States
of America.

LAWRENCE B. PEDOWITZ,
ROBERT J. JOSSEN,
Assistant United States Attorneys,
Of Counsel.

UNITED STATES COURT OF APPEALS
FILED
JAN 24 1978
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

TABLE OF CONTENTS

	PAGE
Preliminary Statement	1
Statement of Facts	2
The Government's Case	2
A. Introduction	2
B. Demauro's Conversation with James Woop	3
C. Demauro's Conversation with Samuel Roberto	4
D. Paul Kelly's Exchanges for Stanzione, and the Mid-1973 Conversations Between Demauro, Kelly and Dekeersmaeker	5
E. The Events of April 1-8, 1974	6
F. The Events of April 9, 1974	8
G. The Martin-Wynne Interview and The $10.5 Million Lawsuit	10
H. Demauro's Grand Jury Appearance	11
The Defense Case	16
The District Court's Findings of Fact and Conclusions of Law	18
ARGUMENT:	
POINT I—Demauro's Perjurious Testimony Was Material to the Grand Jury's Inquiries	18
A. Answer [1]	27
B. Answers [4], [5] and [6]	28
C. Answers [2], [3], [7], [8], [9], [10], [11], [12] and [13]	29

PAGE

POINT II—Demauro's Conversations With John Martin, Esq., Were Not Privileged 31

POINT III—Demauro's Responses Were Not Literally True 38

A. Answer [1] 39

B. Answers [2] and [3]—The Anonymous Phone Call 41

C. Answers [4]-[6]—The Kelly Incident 43

D. Answers [7]-[13]—The Campisi Conversation 43

CONCLUSION 44

TABLE OF CASES

American Surety Co. v. *Sullivan*, 7 F.2d 605 (2d Cir. 1926) 23

Branzburg v. *Hayes*, 408 U.S. 665 (1972) 19

Bronston v. *United States*, 409 U.S. 352 (1973) 38, 39, 41, 43

Carroll v. *United States*, 16 F.2d 951 (2d Cir.), *cert. denied*, 273 U.S. 763 (1927) 19

City of Philadelphia v. *Westinghouse Electric Corp.*, 210 F. Supp. 483 (E.D. Pa. 1962), *mandamus and prohibition denied sub nom. General Electric* v. *Kirkpatrick*, 312 F.2d 742 (3d Cir. 1962), *cert. denied*, 372 U.S. 943 (1963) 35

Continental Baking Co. v. *United States*, 281 F.2d 137 (6th Cir. 1960) 21, 23

Egan v. *United States*, 137 F.2d 369 (8th Cir.), *cert. denied*, 320 U.S. 788 (1943) 22

PAGE

Harper & Row Publishers, Inc. v. *Decker*, 423 F.2d 487 (7th Cir. 1970), *aff'd memo. by equally divided Court*, 400 U.S. 955 (1971) 35

In re Bonanno, 344 F.2d 830 (2d Cir. 1965) 33

In re Grand Jury Proceedings (*Jackier*), 46 U.S. L.W. 2107 (E.D. Mich., Aug. 2, 1977) 36, 37

In re Grand Jury Subpoena Duces Tecum, 77 C. 1075 (E.D.N.Y., Aug. 3, 1977) (Neaher, J.) 36, 37

In re Grand Jury Subpoena Duces Tecum, 391 F. Supp. 1029 (S.D.N.Y. 1975) 35-36, 37

In re Horowitz, 482 F.2d 72 (2d Cir.), *cert. denied*, 414 U.S. 867 (1973) 35

J.C.B. Super Markets, Inc. v. *United States*, 530 F.2d 1119 (2d Cir. 1976) 22

Riss & Co. v. *United States*, 262 F.2d 245 (8th Cir. 1958) 23

Standard Oil Co. v. *United States*, 307 F.2d 120 (5th Cir. 1962) 22

Steere Tank Lines, Inc. v. *United States*, 330 F.2d 719 (5th Cir. 1963) 22, 23

United States v. *Albergo*, 539 F.2d 860 (2d Cir. 1976) 19, 42

United States v. *Alberti*, Dkt. No. 76-1543, slip op. 5505 (2d Cir., Aug. 24, 1977) 41

United States v. *Armour & Co.*, 168 F.2d 342 (3d Cir. 1948) 23

United States v. *Bartlett*, 449 F.2d 700 (8th Cir. 1971), *cert. denied*, 405 U.S. 932 (1972) ... 35, 36

United States v. *Birrell*, 470 F.2d 113 (2d Cir. 1972) 25

United States v. *Bonacorsa*, 528 F.2d 1218 (2d Cir.), *cert. denied*, 426 U.S. 935 (1976) 26, 39, 41, 43

United States v. *Calandra*, 414 U.S. 338 (1974) .. 25

PAGE

United States v. *Carter*, 311 F.2d 934 (6th Cir. 1963) 23

United States v. *Chapin*, 515 F.2d 1274 (D.C. Cir.), *cert. denied*, 423 U.S. 1015 (1975) 39, 41, 42

United States v. *Corr*, 543 F.2d 1042 (2d Cir. 1976) 42

United States v. *Doulin*, 538 F.2d 466 (2d Cir.), *cert. denied*, 429 U.S. 895 (1976) 19, 25

United States v. *Freedman*, 445 F.2d 1220 (2d Cir. 1971) 19

United States v. *George F. Fish, Inc.*, 154 F.2d 798 (2d Cir.), *cert. denied*, 328 U.S. 869 (1946) .. 22

United States v. *Gugliaro*, 501 F.2d 68 (2d Cir. 1974) 19

United States v. *Hilton Hotels Corp.*, 467 F.2d 1000 (9th Cir. 1972) 21, 23

United States v. *Kovel*, 296 F.2d 918 (2d Cir. 1961) 32, 33

United States v. *Lattimore*, 215 F.2d 847 (D.C. Cir. 1954) 42

United States v. *Long*, 534 F.2d 1097 (3d Cir. 1976) 39, 42

United States v. *Mancuso*, 485 F.2d 275 (2d Cir. 1973) 19, 20

United States v. *Paolicelli*, 505 F.2d 971 (4th Cir. 1974) 39, 42

United States v. *Ridglea State Bank*, 357 F.2d 497 (5th Cir. 1966) 22, 23

United States v. *Silverman*, 430 F.2d 106 (2d Cir. 1970), *cert. denied*, 402 U.S. 953 (1971) ... 35, 36

United States v. *Stern*, 511 F.2d 1364 (2d Cir.), *cert. denied*, 423 U.S. 829 (1975) 33

PAGE

United States v. *Stone*, 429 F.2d 138 (2d Cir. 1970) 19

United States v. *T.I.M.E.-D.C., Inc.*, 381 F. Supp. 730 (W.D. Va. 1974) 23

United States v. *United Shoe Machinery Corp.*, 89 F. Supp. 357 (D. Mass. 1950) 35

United States v. *Wolfson*, 437 F.2d 862 (2d Cir. 1970) 39, 41, 42

Young v. *Taylor*, 466 F.2d 1329 (10th Cir. 1972) 35, 37

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 77-1463

UNITED STATES OF AMERICA,

Appellee,

—v.—

PASCHAL DEMAURO,

Defendant-Appellant.

BRIEF FOR THE UNITED STATES OF AMERICA

Preliminary Statement

Paschal Demauro appeals from a judgment of conviction entered on November 4, 1977, after a three day non-jury trial, before the Honorable Charles H. Tenney, United States District Judge for the Southern District of New York.

Indictment 77 Cr. 145, filed February 24, 1977, in one count, charged Demauro with having falsely testified about material matters while under oath before a grand jury sitting in the Southern District of New York.

The trial of this charge commenced before Judge Tenney on July 25, 1977, and the taking of testimony ended on July 27, 1977. Subsequently, the Government and defense submitted written summations, and, on September 16, 1977, Judge Tenney returned a verdict of guilty in open court. Judge Tenney simultaneously issued a twenty-

five page opinion setting forth the Court's findings of fact and conclusions of law.

On November 4, 1977, Judge Tenney sentenced Demauro to a suspended sentence of one year's imprisonment, a term of one year's unsupervised probation, and a $1000 fine.

Statement of Facts

The Government's Case

A. Introduction

In November 1976, the defendant Demauro, formerly the Vice-President in charge of operations of 23 branches of the Chemical Bank in Northern Manhattan and the Bronx, was called to testify before a Southern District of New York grand jury. At the time, the grand jury was investigating possible criminal violations, by the Chemical Bank and its employees, of the Bank Secrecy Act, 31 U.S.C. §§ 1051-55, 1058-59, 1081-82, which, as of June 15, 1974, requires banks to file reports with the Federal Reserve concerning all cash transactions in excess of $10,000. Under the auspices of the conspiracy statute, the grand jury was also inquiring about possible violations of the banking, tax and narcotics laws resulting from narcotics dealers bribing Chemical Bank employees to exchange ("wash") large quantities of small denomination bills for large denomination bills, which are more easily transferable in the narcotics trade. A failure to report exchanges in excess of $10,000 would constitute a violation of the Bank Secrecy Act. (App. 37a-38a).*

---

* The abbreviation "App." refers to defendant's appendix; "Br." to his brief; and "Tr." to the trial transcript.

During the course of Demauro's grand jury testimony, he was questioned both generally and specifically about when he had first learned that money exchanging ("washing") had occurred at the Chemical Bank. Demauro testified that he first learned about this practice in September, 1975. The testimony of the Government's witnesses, former Chemical Bank employees James Woop, Samuel Roberto, Paul Kelly, George Dekeersmaeker and Michael Campisi, as well as the testimony of a school teacher, Jane Campisi, directly contradicted Demauro's grand jury testimony.

After hearing from the Government witnesses and the defendant himself, Judge Tenney found that "the entire fabric of defendant's testimony at trial revealed a concerted and continuous effort to give false testimony in the face of contradictory testimony from a long string of witnesses . . ." and that "[t]he evidence of these witnesses leads to the inescapable conclusion that Demauro was informed of money washing [at the Chemical Bank] as early as 1968 and thereafter on a number of occasions." (App. 57a). Judge Tenney concluded that one of these occasions was in 1968 or 1969 when James Woop, a Chemical Bank employee, told Demauro that he had heard that exchanging was occurring. Another such occasion was when Paul Kelly, another Bank employee, admitted to Demauro in 1973 that he, Kelly, had exchanged money on a number of occasions in 1969. In still another incident, Michael Campisi, a Chemical Bank Assistant Manager, told Demauro, in April 1974, during a lengthy telephone conversation, that Campisi had heard that exchanging was going on at branches throughout the Bronx and possibly Northern Manhattan.

B. Demauro's Conversation With James Woop

In late 1968 or early 1969, James Woop, a Chemical Bank branch officer, learned that Thomas Spinelli, a

Chemical Bank officer working in a Bronx branch, had been exchanging large quantities of small bills for large ones. (Tr. 180-81).

Soon thereafter, the defendant Demauro, then chief operating officer for the Bronx and upper Manhattan branches of the Chemical Bank, specifically asked Woop whether he was aware of any exchanging of money. Woop said that he had heard of it. Demauro then asked Woop if he knew who was doing it, and Woop said he would rather not say. (Tr. 182).*

Woop's conversation with Demauro was not an isolated incident.

C. Demauro's Conversation With Samuel Roberto

In 1969, Samuel Roberto was working directly for Demauro at regional headquarters. (Tr. 187-88). Demauro asked Roberto to go to Branch 94 at 125th St. and Lexington Avenue to check out a teller's shortage of $500. (Tr. 190). When Roberto arrived, he walked into the conference room and found the branch manager, a Mr. Jones, sitting at a table attempting to conceal approximately $10,000 to $20,000 in small bills. (Tr. 187-91).

Roberto, who had first learned of exchanging at this very branch in 1968 (Tr. 186-87), and knew that currency was normally counted through the currency counting machine (Tr. 192-93), concluded that he had walked in on an exchange of "book money." (Tr. 200). He promptly turned around and headed out of the Branch, stopping at

---

* Woop admitted during his trial testimony that he later became personally involved in exchanging. Woop testified that in the spring of 1973, he had participated with others in an exchange of approximately $100,000 of small bills for large in return for a cash payment. (Tr. 182-83).

the desk of the operating officer, Pete Berardi, just long enough to say that Demauro would have to be told about this incident. (Tr. 193).

Upon returning to Division Headquarters, Roberto asked Demauro whether he knew book money was coming into Branch 94. Demauro—who knew Pete Berardi had repeatedly requested a transfer out of Branch 94, which was located in Harlem (Tr. 189-90, 341)—replied, "[g]ood, now maybe Pete Berardi will stop asking me for a transfer." (Tr. 194).*

D. Paul Kelly's Exchanges for Stanzione, and the Mid-1973 Conversations Between Demauro, Kelly and Dekeersmaeker

During 1969, Paul Kelly, a Chemical Bank officer in the Bronx, on a few occasions exchanged $5,000 to $6,000 or more in small bills for Anthony Stanzione. (Tr. 213-14). In late April 1973, IRS Agents interviewed Paul Kelly at Branch 25, a branch supervised by Demauro. Kelly was asked questions about his exchanges of money for Stanzione. (Tr. 215).

After the agents left, Kelly called Demauro. Kelly told Demauro that the agents had been in to speak to him about the exchanging of money. Demauro told Kelly to contact Chemical's legal department. Shortly thereafter, Kelly received a summons requiring his personal appear-

---

* Roberto was later assigned to a number of branches under Demauro's supervision and repeatedly engaged in money washing in return for cash payments. In 1970, Roberto washed $20,000 to $25,000 on each of six to eight occasions. (Tr. 194-95). In 1971 and 1972, Roberto exchanged anywhere from $20,000 to $100,000 on six to eight occasions. This pattern of activity continued through 1974 when Roberto washed money on a number of occasions, the last being a $200,000 transaction. (Tr. 195-98).

ance before the IRS. Kelly then spoke with a Bank attorney, and the attorney arranged to accompany Kelly to the IRS interview. (Tr. 215-18).

In May 1973, at IRS headquarters, Kelly admitted that he had exchanged $5,000 to $6,000 for Stanzione on a few occasions. After the interview, Kelly spoke with Demauro and told him that he had admitted to the IRS exchanging money for Stanzione. (Tr. 219-20).

In June 1973, George Dekeersmaeker took over as manager of the branch at which Kelly worked. (Tr. 203, 220). During a briefing, Demauro advised Dekeersmaeker that "that darn fool Kelly" had admitted to the IRS that he had exchanged money for Stanzione. Concerned about future exchanging incidents, Demauro told Dekeersmaeker to make certain that Stanzione no longer had accounts at the branch. (Tr. 203-09).

Kelly—whose salary increases were passed on by Demauro (Tr. 205, 221)—did not receive a merit increase on his anniversary date at the end of 1973. Kelly approached Dekeersmaeker during 1974 to enlist his help in obtaining a raise at the end of 1974. At that time, Dekeersmaeker told Kelly precisely what he had been told by Demauro the year before: that as far as Demauro was concerned, the worst mistake Kelly had made was admitting to the IRS that he had exchanged money. Dekeersmaeker nonetheless intervened with Demauro, asking that bygones be bygones, and Kelly got his raise at the end of 1974. (Tr. 221, 206).

E. The Events of April 1-8, 1974

On April 1, 1974, IRS Agent Thomas Egan was advised by New York City Police Officers that three days

earlier, Anthony D'Ambrosio had been arrested in possession of 24 pounds of heroin. The officers told Egan that they believed Thomas Spinelli, the Branch Manager at Chemical Bank Branch 107, had exchanged narcotics proceeds for D'Ambrosio. Egan was also told that Spinelli had assisted D'Ambrosio in a scheme to embezzle funds from American Airlines through an account at Branch 107 called Express Glass. (Tr. 29-30, 43-47).

That same day, Agent Egan went to Branch 107 at Westchester Square in the Bronx and questioned Spinelli about exchanging money for D'Ambrosio as well as the embezzlement scheme. Spinelli denied any involvement. Michael Campisi, the Assistant Manager at Branch 107, was also questioned and denied any knowledge of wrongdoing. (Tr. 30-31).

At about 5:00 p.m. on April 8, 1974, Demauro received an anonymous phone call about Spinelli and the IRS investigation. The caller said that he had a cousin at IRS, and the Bank had a problem with Spinelli and narcotics.

That same evening, Demauro phoned Michael Campisi at Campisi's home. Demauro began the call, which lasted 32 minutes, by informing Campisi of the contents of the anonymous phone call. (Tr. 241-42). Campisi then told Demauro about IRS's inquiries of Spinelli concerning the exchanging of money for D'Ambrosio and the embezzlement scheme, and said that he did not believe that Spinelli was involved either in the exchanging of money, the embezzlement, or narcotics. (Tr. 242).*

---

* Campisi, in fact, knew that Spinelli was exchanging money for Anthony D'Ambrosio and, indeed, was being paid by Spinelli to keep quiet about it. (Tr. 238-39).

Demauro then specifically asked Campisi if he thought exchanging was going on, and Campisi said that, based on what he heard, it was going on throughout the Bronx and possibly Manhattan. (Tr. 242). This portion of the conversation was overheard by Campisi's wife, who was listening in on an extension. (Tr. 290-91). Demauro and Campisi then discussed methods for controlling money-exchanging, including placing restrictions on the amount of large denomination bills that branches could order. (Tr. 243). Demauro then requested the name and location of the Agent Egan. (Tr. 241-43, 290-91).

F. The Events of April 9, 1974

Early in the morning of April 9, 1974, Demauro called Agent Egan at IRS headquarters in New York City. Demauro told Egan that he had received an anonymous call and that the anonymous caller had said, "I have a cousin who works for Internal Revenue Service and you have a problem with Spinelli and narcotics." (Tr. 32). Demauro then asked about Egan's inquiries at Branch 107, and Egan said he did not think it was an appropriate matter to discuss on the phone. Egan and Demauro agreed to meet in Demauro's office in the Bronx that same morning. (Tr. 33).

When Egan arrived at Demauro's office, Demauro introduced him to Robert Collishaw, a Senior Vice-President of the Bank, who was present throughout the meeting. At the outset, Egan and Demauro again discussed the anonymous call. Demauro reiterated that the caller had said that he had a cousin with the Internal Revenue Service and that there was a problem with Spinelli and narcotics. (Tr. 34). Egan was then asked about his investigation at Branch 107 and told Demauro and Collishaw that he had received information that money had been embezzled from a subsidiary of American Airlines and had been processed through an account at

Branch 107. Egan also said that he believed the account had been opened by Anthony D'Ambrosio, a major narcotics trafficker, and that Spinelli was somehow involved with D'Ambrosio. (Tr. 35, 102).

Collishaw then asked Egan what Spinelli could be doing for a narcotics dealer and whether Spinelli could be selling narcotics. (Tr. 35, 102). Egan said, no, a person did not have to sell narcotics to be involved in the narcotics business—he could be exchanging small bills for large. (Tr. 35-36, 102). Egan then explained that narcotics dealers need large denomination bills because they can be more readily concealed and because bulk sellers of narcotics demand payment in large bills. Egan went on to explain that dealers were willing to pay from 1 to 3% to exchange bills, and therefore a $100,000 exchange could net an employee $1,000 to $3,000. Egan also explained the soon-to-be effective provisions of the Bank Secrecy Act and that the Government expected compliance with the Act would combat huge currency exchanges by organized crime figures. (Tr. 35-38, 103-05).*

After this lengthy discussion of money exchanging and the Bank Secrecy Act, all brought about by an inquiry by Collishaw as to what Spinelli could be doing for a narcotics dealer, Collishaw suggested to Demauro that Spinelli should be called down and confronted with what they had just learned from Egan. Egan asked that that not be done, since his investigation was not yet complete. (Tr. 105, 39). The conversation in Demauro's office lasted approximately two hours. (Tr 38, 101).

On April 19, 1974, Demauro cautioned a group of Bronx branch managers against exchanging currency and advised them that the IRS was investigating such matters.

---

* During the discussion, Demauro explained some of the difficulties of detecting exchanging at a branch, and defined for Collishaw the term "exchanging small for large." (Tr. 104).

Six to eight weeks later, Egan received a phone call from Demauro. Demauro asked about the status of the investigation of Spinelli. Egan replied that he had finished his inquiries and Demauro was free to take any action he deemed appropriate. (Tr. 39).*

G. The Martin-Wynne Interview and The $10.5 Million Lawsuit

In mid-1975, the Chemical Bank was informed by the United States Attorney's Office for the Southern District that it was the subject of a criminal investigation of violations of the Bank Secrecy Act and conspiracy laws. Shortly thereafter, the Bank hired John S. Martin, Jr., Esq., to conduct an internal investigation of violations of the Bank Secrecy Act and of money-washing in the Bronx and upper-Manhattan branches.

In early October 1975, Demauro was interviewed by Mr. Martin and John Wynne, general counsel of the Bank. At the time of the interview, Demauro knew that a number of the employees he had supervised between 1968 and the end of 1974 had been interviewed about exchanging; that some had admitted their involvement; and that, as a former Vice-President in charge of the Bronx branches and upper-Manhattan branches, his job was in jeopardy if he admitted any knowledge of money-exchanging, since he had not taken effective steps to see to it that employee participants were stopped and disciplined. (Tr. 144-47, 370-71, 373). In response to Martin's questioning, Demauro denied that he had ever heard anything about exchanging at the Chemical Bank

---

* Demauro never took any action—investigative or otherwise —with respect to Spinelli. Demauro claimed that this was because Agent Egan had told him Spinelli was "clean." (Tr. 367). Egan, who knew Spinelli was anything but, testified that he never told Demauro any such thing. (Tr. 78-85).

prior to September 1975; denied that Egan on April 9, 1974 had ever suggested Spinelli was involved in exchanging; and denied that the anonymous call he had received on April 8, 1974 linked Spinelli in any way to narcotics. (Tr. 372-75).

Within a week, Martin again interviewed Demauro. Demauro's version of the facts remained the same. (Tr. 153-54). A few days later, Demauro was fired. (Tr. 155).

Approximately one year later, and shortly before his grand jury appearance, Demauro commenced a $10.5 million lawsuit for libel and wrongful discharge against the Chemical Bank, its Chairman, its President, its Executive Vice-President, its general counsel John Wynne, and John Martin. (Tr. 155). This suit was premised on Demauro's claim that his discharge had been unjustified since prior to September 1975 he had no knowledge whatever of exchanging at the Chemical Bank. (Tr. 377).

H. Demauro's Grand Jury Appearance

In November 1976, while his lawsuit was still pending, Demauro appeared in the grand jury. (Tr. 155-56). Before testifying he was sworn by the grand jury foreman. He was then advised of his constitutional rights and warned about the dangers of perjury. (Tr. 19-20).* Demauro then testified, in pertinent part, as follows: (Those responses charged in the Indictment as perjurious are underlined; the responses which Judge Tenney found to be perjurious are numbered consecutively in brackets at the beginning of the response and marked, at the conclusion of the response, with an asterisk.)**

---

* Demauro was represented by counsel at the time of his grand jury appearance and was told he was free to consult with his attorney outside the grand jury room. (Tr. 19-20).

** This is the same numbering and marking system used in Demauro's brief. (See Br. 4-8).

"Q. When is the first time that you learned that money-washing or the exchange of large amounts of money, small bills for large, was going on at Chemical Bank?

A. [1] Probably in September of '75.*

Q. Didn't Agent Egan make mention of it in the 1974 meeting?

A. He did not mention it at Chemical Bank. He said banks throughout the country.

Q. Did he make mention of Mr. Spinelli at that meeting?

A. He mentioned Spinelli in connection with another matter.

Q. What did he say concerning Spinelli?

A. He said that Spinelli was under investigation—there was an account called Sky Chef and checks of Sky Chef were being laundered through an account called Express Glass at Spinelli's branch 107.

Q. Did he mention that IRS suspected that Mr. Spinelli was involved in narcotics operations?

A. Not to my knowledge. He never mentioned that.

Q. Had you received an anonymous phone call concerning Mr. Spinelli at about that time?

A. Yes, I did.

Q. What did the caller say?

A. [2] To the best of my recollection just, I have a relative who works in Internal Revenue your Mr. Spinelli is under investigation. That was the end of the call.*

Q. And nothing more was said?

A. [3] Not on the call, no.*

Q. Do you know an individual by the name of Jim Woop, W-o-o-p?

A. Yes, I do.

Q. Do you recall telling him at some time prior to 1972 that the exchange of money was going on at branches of Chemical Bank?

A. To my knowledge, I never remember saying that.

Q. Do you recall an individual by the name of Sam Roberto, R-o-b-e-r-t-o?

A. Yes, I do.

Q. Do you recall him telling you around 1969 that someone at the branch where he works was washing money?

A. I do not recall that, no.

Q. Do you recall Mr. Roberto mentioning the exchanging of money to you at any time?

A. No. To the best of my knowledge, I do not remember that.

Q. Did it ever come to your attention that an employee of Chemical Bank by the name of Kelly, K-e-l-l-y, first name Paul, was washing money for a customer of the bank?

A. [4] I knew he did something, but I do not recall that it was washing money.*

Q. What is it that you recall him doing?

A. [5] All I remember was that he had received apparently a subpoena to produce some bank records and then subsequently was asked to appear before a Grand Jury or somewhere and when he brought that to my attention I had him contact the legal department at Chemical Bank.*

Q. Do you recall telling anyone at Chemical Bank that Kelly had been involved in the washing of money?

A. [6] I do not recall that, no.*

Q. Following the anonymous phone call which you received concerning Mr. Spinelli, what if anything did you do?

A. I called Mr. Egan and I talked to Mr. Collishaw.

Q. Did you tell anyone else in the bank about the phone call?

A. [7] Not that I remember, no.*

Q. Do you recall making any inquiries of anyone at Chemical Bank at about that time concerning the washing of money?

A. [8] I might have just discussed it in general terms just to find out how it would be done, but nothing specific.*

Q. Did anyone working at the bank inform you at that time that money washing was going on?

A. [9] To the best of my knowledge, no.*

Q. You have no recollection of anyone telling you that?

A. In what year are you saying now?

Q. 1974.

A. [10] The only knowledge I had at all about washing money was what Mr. Egan told me.*

Q. Did you make inquiries of anyone else as to whether it was going on?

A. [11] As I say, just in general terms. I might have tried to find out if something like this was going on in a branch, how would you know if it was going on, just in general terms.*

Q. Were all your inquiries answered in the negative?

A. [12] I didn't ask if it was going on. I asked how would you be able to detect it if it was going on.*

Q. Why didn't you ask whether it was going on?

A. [13] I don't know.* "

On February 24, 1977, Demauro was indicted for perjury. (Tr. 21). At the same time, the grand jury returned a single count indictment charging the Chemical Bank with a felony violation of the Bank Secrecy Act. (Tr. 22). That Indictment was based on evidence that during the period June, 1974 through June, 1975, the Bank had failed to report hundreds of cash transactions in excess of $10,000 which were covered by the Bank Secrecy Act. These unreported transactions included a number in which Bank employees, in return for cash payments, exchanged $10,000 to $250,000 in small bills for large. (Tr. 20-21, 23; see Indictment 77 Cr. 146).* The grand jury also returned indictments, charging tax violations, against Thomas Spinelli and Michael Strolla, two branch managers who had failed to report on their income tax returns the cash bribes they received in return for money washing, and against Anthony D'Ambrosio, the narcotics dealer who exchanged money at Spinelli's branch.** (Tr. 22-23).

---

* The Bank later pleaded guilty to a superseding Information charging 445 misdemeanor violations of the Bank Secrecy Act, and was fined $222,500. These 445 misdemeanor counts did not include the money washing transactions which had been included in the original Indictment. At the time of the plea, the Bank stated that it did not believe it was legally responsible for the money washing transactions, since its employees had been bribed. See footnote on page 24, *infra*.

** Spinelli and Strolla subsequently pleaded guilty. D'Ambrosio, who is also under narcotics indictment in the State, is a fugitive.

The Defense Case

Demauro took the stand in his own defense. Approximately one-half of his direct examination was devoted to establishing (i) that from sometime in July 1974 until sometime in October 1974, the defendant was involved first on a part-time basis and then on a full-time basis in an unsuccessful attempt to acquire the Franklin National Bank, and (ii) that from January 16, 1975, until October 1975, he was involved in running the Long Island Security National Bank branches acquired by Chemical Bank in 1975. (Tr. 318-25). This testimony, aside from demonstrating that Demauro had an excellent memory for detail when he cared to utilize it,* proved little of relevance, since all of the pertinent conversations between the Government witnesses and the defendant had occurred between 1968 and April 9, 1974, while the defendant supervised the Bronx and upper Manhattan branches. The remaining half of the defendant's direct examination was devoted to reaffirming his responses to the grand jury's questions.

Demauro's cross-examination was, as Judge Tenney found, far more revealing than his direct. (*E.g.*, App. 56a-57a). The defendant was asked about the testimony of Woop, Roberto, Dekeersmaeker and Kelly and about the conversations each of them had had with him. Demauro admitted that he would not have forgotten the

---

* For example, Demauro recalled being advised about the Security National Bank takeover on "Thursday, January the 16th of 1975," while "at home, about 7:30 in the evening" by "Charles C. Lehing" (Tr. 321-22), and then purported to provide the Court with the exact words of the conversion he had with Lehing. (Tr. 322). Demauro's memory of this call can be usefully contrasted with his extraordinary claim during cross-examination that he recalled nothing at all of the 32 minute call to Michael Campisi on April 8, 1974.

conversations testified to by these men and claimed that each of the four men had lied. (Tr. 342, 344, 348-49, 359, 360).

Demauro also admitted that he would not have forgotten if the anonymous caller on April 8, 1974 had mentioned narcotics in connection with Spinelli (Tr. 352), and then testified unequivocally that he never mentioned the word narcotics to Agent Egan in connection with the anonymous call. (Tr. 352, 362).

Demauro was then asked about the April 8, 1974, 32 minutes phone call to Michael Campisi, Spinelli's Assistant Manager—a call which followed on the heels of the anonymous phone call. Demauro testified, quite incredibly, that he had no recollection whatever of the phone call. (Tr. 354-56). Demauro then conceded that he had never previously called Campisi at home and was not Campisi's friend. (Tr. 356). With respect to Campisi's testimony that he had told Demauro during this April 8, 1974 phone call that he had heard exchanging was going on throughout the Bronx, Demauro conceded that he would not forget a statement of that sort, and then added Campisi to the growing list of persons who were lying about him. (Tr. 359-60).

With respect to the April 9, 1974 meeting, Demauro, in conflict with both Agent Egan and Collishaw, contended that no mention was made of D'Ambrosio being involved in narcotics. (Tr. 362). Demauro also asserted, again in direct contradiction to both Egan and Collishaw (Tr. 35, 102), that he had no recollection of Collishaw asking if Spinelli could be selling narcotics, again conceding that he would not likely forget such a question. (Tr. 363).

Demauro also claimed, in direct contradiction to Agent Egan, that a few weeks after this April 9, 1974 meeting, Agent Egan had called him to say, "Spinelli is clean." (*Compare* Tr. 366-67 *with* Tr. 80-85, 87).

The defense concluded with a series of character witnesses. (Tr. 379-415).

The District Court's Findings of Fact and Conclusions of Law

Judge Tenney's findings of fact and conclusions of law are fully set forth in the appendix at pages 37a-61a. Judge Tenney found that thirteen of the twenty responses alleged in the Indictment to be perjurious were knowingly false and material beyond a reasonable doubt. Of the remaining seven responses, Judge Tenney found them to be literally true, though some were "evasive." (App. 52a).

ARGUMENT

POINT I

Demauro's Perjurious Testimony Was Material to the Grand Jury's Inquiries.

Demauro's principal claim is that his false testimony was not material to the grand jury's investigation, because as a matter of law "neither the answers defendant in fact gave nor the truth he allegedly concealed could have impeded or furthered the grand jury's investigation." (Br. 12). He argues that the District Court erred in concluding that his personal knowledge concerning money washing at the Chemical Bank would be of any relevance to the Bank's potential criminal liability for failure to report these transactions pursuant to the Bank Secrecy Act. Defendant's argument misconceives the law of corporate criminal liability.

The District Court recognized that the materiality of Demauro's false statements was to be evaluated against

the well-settled test "whether the false testimony has a natural effect or tendency to influence, impede, or dissuade the grand jury from pursuing its investigation." *Carroll* v. *United States*, 16 F.2d 951, 953 (2d Cir.), *cert. denied*, 273 U.S. 763 (1927); see also *United States* v. *Doulin*, 538 F.2d 466, 470 (2d Cir.), *cert. denied*, 429 U.S. 895 (1976); *United States* v. *Stone*, 429 F.2d 138 (2d Cir. 1970), and cases there cited. (See App. 58a). This liberal test of materiality established by *Carroll* and its progeny gives recognition to the need of the grand jury for truthful responses so that it may fulfill its vital function of uncovering crime through exploration of every available clue and witness. See *United States* v. *Stone*, *supra*, 429 F.2d at 140, *quoted with approval in Branzburg* v. *Hayes*, 408 U.S. 665, 701 (1972). *See also*, M. Frankel & G. Naftalis, The Grand Jury 105 (1975).* The District

---

* Defendant's reliance on the stricter materiality test enunciated in *United States* v. *Freedman*, 445 F.2d 1220, 1226-27 (2d Cir. 1971), is misplaced, since the facts here satisfy either standard. Moreover, while it is true that *Freedman* sets a slightly different and stricter test for materiality, that is, "it must be shown that a truthful answer would have been of sufficient probative importance to the inquiry so that, as a minimum, further fruitful investigation would have occurred," in *United States* v. *Mancuso*, 485 F.2d 275 (2d Cir. 1973), this Court recognized that the perjury in *Freedman* occurred not before a grand jury, but in an SEC proceeding, where factual issues are more precisely defined and rigidly predetermined than in a grand jury. The Court plainly noted that a less rigid test has traditionally been applied to perjury before a grand jury.

Although *Mancuso* did not decide that the *Freedman* test should not apply to grand juries, and *United States* v. *Doulin*, *supra*, 538 F.2d at 470 & n. 3, though applying the *Carroll* standard, also left this issue open, this Court seemingly did resolve this question in *United States* v. *Gugliaro*, 501 F.2d 68 (2d Cir. 1974), where the Court did not apply the more restrictive *Freeman* test to perjury committed by a defendant at a prior criminal trial. See also *United States* v. *Albergo*, 539 F.2d 860, 865 (2d Cir. 1976) (Mansfield, *J.*, dissenting). It follows, we submit, a *fortiori* from *Gugliaro* that the *Freedman* test should not apply to a grand jury proceeding which is necessarily more broad-ranging because it is investigative rather than adjudicative.

Judge also recognized that in assessing materiality, it was necessary to examine

> "both the nature of the inquiry at which the testimony was given and the evidence introduced at trial to prove its falsity, in order to determine whether a truthful answer could conceivably have aided the grand jury investigation." *United States* v. *Mancuso*, 485 F.2d 275, 280-81 (2d Cir. 1973). (See App. 58a).

With these principles in mind, Judge Tenney made the following findings of fact and conclusions of law:

> "During the grand jury's investigation, it became apparent that the Chemical Bank had, during the period July 1, 1974 through June 30, 1975, failed to file the required Bank Secrecy Act reports for hundreds of transactions. These wholesale violations of the Act included a number of instances in which Chemical Bank employees in the Bronx and upper Manhattan had 'washed' large amounts of cash for narcotics dealers and other criminals. Among the questions which the grand jury had to determine was whether the Chemical Bank was criminally liable for the failure to file the required Bank Secrecy Act forms, and, in this regard, it was essential to determine whether any responsible bank officer or employee knew or had reason to know that the Bank Secrecy Act would not be complied with. This was so, because in order to establish a criminal violation of the Bank Secrecy Act, it was necessary to prove that the bank 'wilfully' violated the Act, and 'wilfully' in this context means that the person or entity charged with doing the act knows what he is doing and that he either intentionally disregards the law or is plainly indifferent to its requirements. [Citations omitted].

More specifically, it was highly relevant to the grand jury's assessment of the possible criminal liability of the Bank to determine whether any of the Bank's officers were aware of a substantial risk that the Act would not be complied with. This was all the more relevant since the law is quite clear that a corporation such as the Bank cannot escape liability for the actions of its employees merely by 'issuing general instructions without undertaking to enforce these instructions *by means commensurate with the obvious risks.*' *United States* v. *Hilton Hotels Corp.*, 467 F.2d 1000, 1007 (9th Cir. 1972) (emphasis added); *Continental Banking Co.* v. *United States*, 281 F.2d 137, 149 (6th Cir. 1960).

With this background, it becomes clear why inquiries of Demauro about his knowledge of pre-June, 1974 money-washing were so important to the grand jury's investigation. Since the amounts washed at any one time amounted anywhere from $10,000 to $250,000, the bank employees were obviously receiving substantial amounts of money for the service they provided. Equally obvious was the fact that those individuals desiring to wash money were not going to do so if the bank employees were going to report the money-washing transactions under the Bank Secrecy Act to the IRS. Accordingly, if Demauro, a Vice-President of the Chemical Bank in charge during 1974 and early 1975 of the operations of the Bank's Bronx and upper Manhattan branches, knew in June 1974 (as the Act went into effect) that Bank employees over the years had been engaged in money-washing, then he was certainly cognizant of the *substantial risk* that such activities would continue after June 1974, as they in fact did. Moreover, Demauro's knowledge and failure to take all of the necessary steps to see to it that the Bank

> was in full compliance with the Act would necessarily and appropriately be imputed to the Bank, thereby giving rise to corporate criminal liability." (App. 59a-61a).

Demauro's response to the District Court's reasoning is that under principles of corporate criminal liability, the acts of the Bank's employees who engaged in money-washing are automatically attributable to the Bank, and, therefore, Demauro's personal knowledge of money washing and the risks of non-compliance with the Bank Secrecy Act were entirely irrelevant to the question of the Bank's criminal liability. Demauro's analysis of the law is incorrect.

To be sure, Demauro is correct that the unlawful acts of employees at all levels of the corporate hierarchy will be attributed to the corporation *if* the employee's acts are within the scope of his employment. *United States* v. *George F. [illegible], Inc.*, 154 F.2d 798, 801 (2d Cir.), *cert. denied*, 328 U.S. 869 (1946). However, what Demauro overlooks is that not all employee actions are within the scope of employment. A corporation does not ordinarily acquire the knowledge or requisite criminal intent of "unfaithful servants whose conduct [is] undertaken to advance the interests of parties other than their corporate employer." *Standard Oil Co.* v. *United States*, 307 F.2d 120, 129 (5th Cir. 1962); see also *J.C.B. Super Markets, Inc.* v. *United States*, 530 F.2d 1119, 1122 (2d Cir. 1976); *United States* v. *Ridglea State Bank*, 357 F.2d 497 (5th Cir. 1966); *Steere Tank Lines, Inc.* v. *United States*, 330 F.2d 719, 723 (5th Cir. 1963); *Egan* v. *United States*, 137 F.2d 369, 379 (8th Cir.), *cert. denied*, 320 U.S. 788 (1943). In cases in which the employee has acted for his own benefit and not the corporation's, corporate liability instead depends on whether the corporation, through its non-corrupt employees, "wilfully" permitted the unlawful

acts to occur.* That issue in turn depends on a variety of factors, such as (i) the extent of the knowledge of non-corrupt employees of the illegal behavior, *Steere Tank Lines, Inc.* v. *United States, supra*, 330 F.2d at 723-24; *United States* v. *Ridglea State Bank, supra*, 357 F.2d at 500; and (ii) the steps taken to detect the illegal conduct, consistent with the risks that the conduct may occur, *Steere Tank Lines, Inc.* v. *United States, supra*, at 723;** *Riss & Co.* v. *United States*, 262 F.2d 245, 249-51 (8th Cir. 1958); *United States* v. *T.I.M.E.-D.C., Inc.*, 381 F. Supp. 730, 738-39 (W.D. Va. 1974). A corporation that has issued express instructions cautioning against the illegal conduct does not "gain exculpation . . . without undertaking to enforce those instructions by means commensurate with the obvious risks." *United States* v. *Hilton Hotel Corp.*, 467 F.2d 1000, 1007 (9th Cir. 1972), *cert. denied*, 409 U.S. 1125 (1973). *See also, Continental Baking Company* v. *United States, supra*, 281 F.2d 137, 149-50; *United States* v. *Armour & Co.*, 168 F.2d 342, 343-44 (3d Cir. 1948).

---

* "Wilfully" in this context means that the entity charged with doing the act either intentionally disregards the law or is plainly indifferent to its requirements. *Steere Tank Lines, Inc.* v. *United States, supra*, 330 F.2d at 722; *United States* v. *Carter*, 311 F.2d 934, 943 (6th Cir. 1963); *Riss & Co.* v. *United States*, 262 F.2d 245, 249 (8th Cir. 1958); *American Surety Co.* v. *Sullivan*, 7 F.2d 605, 606 (2d Cir. 1926); *United States* v. *Time-D.C. Inc.* 381 F. Supp 730, 740 (W.D. Va. 1974).

** In *Steere Tank Lines*, for example, in order to make extra money, employee truck drivers had falsified logs required to be kept by the Interstate Commerce Commission. The Fifth Circuit held that, although the corporation could not be held automatically criminally liable for the acts of the drivers done solely for their personal benefit, the acts of the corrupt drivers would be attributed to the corporation where non-corrupt employees knew of the falsification and other employees had been warned of the falsifications but did not take steps to detect the violations. 330 F.2d at 723-24

Applying these principles, it is readily apparent why it was so important to the grand jury's inquiries to determine the full extent of Demauro's knowledge of money washing. The employees who had exchanged money had been bribed to do so. As a result, the Bank had a substantial argument that the employees who engaged in exchanging had been acting outside the scope of their employment for their own benefit, and accordingly, their knowledge of wrongdoing should not be attributed to the Bank.* The Bank could not escape liability, however, if employees such as Demauro, who had not been bribed, had knowledge that money washing had been going on at the Bank and/or failed to take all the necessary steps

---

* That the Bank would have asserted this defense at trial of the felony indictment is confirmed by the Bank's statement at the time of its guilty plea to a superseding Information charging 445 misdemeanor violations of the Bank Secrecy Act:

> "Your Honor, the original indictment in this case referred to approximately $400,000 in transactions involving the laundering of money. In view of the publicity that surrounded the indictment, I do want to make clear that none of the transactions covered in this plea of guilty involved any laundering of money.
>
> In 1975, when the United States Attorney advised the top officials of the Bank that some of the Bank's employees may have been engaged in such transactions, a complete internal investigation was conducted by the bank. The investigation revealed that individuals outside the Bank paid employees of the Bank in a number of branches in Upper Manhattan and the Bronx substantial amounts of money to exchange bills of large denominations for bills of small denominations. As a result of the Bank's investigation, in October 1975, approximately 25 people who had engaged in such transactions were discharged.
>
> We believe that under existing law, the fact that Bank employees were bribed by the individuals involved to perform this service shows they were not acting for the Bank or in the Bank's interest when they engaged in these transactions." (Tr. of guilty plea before Judge Carter, April 14, 1977, at 13-14).

—commensurate with the obvious risks—to prevent and detect violations of the Bank Secrecy Act. In the words of Judge Tenney, "it was highly relevant to the grand jury's assessment of the possible criminal liability of the Bank to determine whether any of the Bank's officers were aware of a substantial risk that the Act would not be complied with." (App. 59a-60a).*

---

* Even assuming *arguendo* that the acts of the bribed employees could have been viewed as benefitting the Bank and therefore would have been automatically attributed to the Bank, that fact would not render immaterial the grand jury's inquiries concerning Demauro's knowledge of exchanging.

First, the grand jury was not only investigating the Bank but also individuals who may have been involved in narcotics, tax, and Bank Secrecy Act violations. Thus, it was material to the grand jury's investigation to have Demauro identify individuals who he had heard were involved in money washing transactions.

Second, absent proof that some officers in a supervisory position such as Demauro had knowledge of exchanging and reason to believe that Bank Secrecy Act violaltions would occur, the grand jury might well have felt that the Bank, though technically liable for the acts of its bribed employees, should not be indicted. A grand jury proceeding is, after all, directed at determining both "whether a crime has been committed *and* whether criminal proceedings, should be instituted...." *United States* v. *Calandra*, 414 U.S. 338, 343-44 (1974). Since "the grand jury's investigative powers must be as broad as its public responsibility," *id.* at 344, the grand jury *could* certainly have been "influence[d]... or dissuaded" from indicting the Bank by Demauro's attempt to withhold the truth about the full extent of the knowledge of non-corrupt bank officials about exchanging. See *United States* v. *Doulin*, *supra*, 538 F.2d at 470 (evidence concerning a defendant's propensity to commit a type of crime that would be inadmissible at trial is nevertheless material to the grand jury's investigation); *cf. United States* v. *Birrell*, 470 F.2d 113, 115 n.1 (2d Cir. 1972).

Third, at a trial, the Bank certainly would have asserted its non-liability for the knowledge of the bribed employees. Even if a jury had ultimately resolved this issue against the Bank, the Government would have offered at trial (and the District Court undoubtedly would have received) proof on the alternative theory

[Footnote continued on following page]

Quite plainly, then, it was highly relevant in determining whether the Bank had taken all of the steps commensurate with the risks, that Demauro, the Chemical Bank officer supervising operations in the Northern Manhattan and Bronx branches, (i) had been advised in April 1974 by a Government Agent that bank officers were receiving 1 to 3% of the proceeds for washing huge amounts of currency for narcotics dealers throughout the country and that the Government expected that compliance with the Bank Secrecy Act would put an end to the practice; (ii) had reason to believe, prior to this meeting with the agent, based on conversations with officers under his supervision, that exchanging was going on throughout the Chemical branches under his control; (iii) had received information, prior to the meeting with the agent, that at least one of the officers under his supervision was involved with narcotics; and (iv) as a result, knew or should have known in June 1974 (when the Bank Secrecy Act went into effect) that employees engaged in money washing were going to be extremely reluctant to comply with the reporting provision of the Bank Secrecy Act, because, with reporting, money washing (and the bribes that accompanied the practice) would cease.

An individual analysis of Demauro's false responses highlights their materiality.*

---

that the Bank was responsible for the acts of these employees because of the knowledge of non-bribed employees such as Demauro and the Bank's failure to take the appropriate steps to enforce the Bank Secrecy Act. Thus, even if the Bank had been convicted on the theory Demauro suggests, it was certainly material to the grand jury's investigation to develop proof on the alternative theory of liability.

* It is, of course, sufficient to support the conviction on this one count Indictment if the Court finds any one of the defendant's responses to be materially false. *United States* v. *Bonacorsa*, 528 F.2d 1218, 1221-22 (2d Cir.), *cert. denied*, 425 U.S. 935 (1976), and cases there cited.

A. Answer [1]

As we have just discussed, in evaluating the Bank's responsibility for failure to report post-June 1974 money washing transactions, it was certainly material to the grand jury's inquiries to learn when Demauro first became aware of money washing at the Bank. Judge Tenney found that Demauro had falsely testified that he first learned of money washing at the Chemical Bank in September, 1975. A truthful response, that Demauro first learned of the practice at the Bank from James Woop in late 1968 or 1969, would have been followed by other inquiries establishing that Demauro had also been advised of the practice by Paul Kelly and, just two months before the Bank Secrecy Act had become effective, had been told by Michael Campisi that exchanging was going on throughout the Bronx and possibly Northern Manhattan. This would have tended to prove the Bank's knowledge of money washing and failure to take the necessary steps to see to it that such transactions were reported under the Bank Secrecy Act.*

---

* There are, of course, many other reasons why this question was material. A truthful response to the question when Demauro first learned of exchanging inevitably would have been followed up by how he had first learned of exchanging. The grand jury which indicted Demauro for perjury and the Chemical Bank for Bank Secrecy Act violations also indicted two Chemical Bank officers for income tax violations arising out of their failure to report bribes received for money washing, as well as Anthony D'Ambrosio, a narcotics dealer, for income tax violations arising out of the moneys he exchanged at the Bank. See page 15, *supra*. A truthful response to this question would have identified witnesses, such as Michael Campisi, Paul Kelly and James Woop, and perhaps others, who would have provided further information about persons who had been engaged in exchanging transactions, which would have been useful in the investigations of income tax and narcotics violations.

B. Answers [4], [5] and [6]

Judge Tenney also found that Demauro testified falsely when he stated that he (i) did not recall ever learning that Paul Kelly had washed money (Answers [4] and [5]), and (ii) did not recall telling anyone that Kelly had been involved in the washing of money (Answer [6]). These questions were material because the *full extent* of Demauro's knowledge of washing was relevant to the Bank's criminal liability. Had Demauro been told by only one bank officer he supervised that exchanging was going on, he might have reasonably concluded that this was an isolated problem not requiring further investigation and steps to rid the Bank of the practice. The fact is, however, that Demauro had been told of the practice by James Woop in 1968 or 1969; had been told in 1973 by Kelly of Kelly's exchanging in 1969; and, the night before his meeting with Agent Egan on April 9, 1974, had been told by Michael Campisi that he had heard the practice was going on throughout the Bronx and possibly Northern Manhattan. Plainly, the Kelly incident, in which Kelly in 1973 admitted to Demauro that in 1969 he had exchanged currency, lent a good deal of concreteness to the suggestions that the practice had occurred and was occurring. Moreover, to the extent that incident added to Demauro's knowledge of exchanging, it was certainly relevant to the grand jury's determinations about whether the Bank had taken the necessary precautions to prevent violations of the Bank Secrecy Act.*

---

* Demauro argues that, since Kelly had admitted exchanging in 1973 to the IRS in the presence of a member of the Chemical Bank's legal department, the Kelly incident "would not in any way demonstrate cognizance on the part of the defendant of a 'substantial risk' that the act would be violated since Chemical's legal department was fully aware of Kelly's activities." (Br. 20). What Demauro conveniently ignores is that the legal department did not have the information supplied to Demauro by Campisi

[Footnote continued on following page]

C. Answers [2], [3], [7], [8], [9], [10], [11], [12] and [13]

Judge Tenney also found that Demauro had perjured himself when he stated (i) that the anonymous phone call he received on April 8, 1974 concerned nothing more than the fact that Thomas Spinelli, a Chemical Bank officer, was under IRS investigation (Answers [2] and [3]); (ii) that he spoke to only Robert Collishaw and Agent Egan about the anonymous call (Answer [7]); (iii) that he did not ask anyone at the Bank, at that time, about whether money washing was going on (Answers [8], [11], [12], and [13]); and (iv) that he was never told by anyone working at the Bank, at about that time, that money washing was going on (Answers [9] and [10]).

Since Demauro's knowledge of exchanging was directly relevant to the Bank's criminal liability, his false denial that Campisi told him that exchanging was going on at the Bank was obviously material.* Similarly, his false

---

and Woop. Therefore, while the Bank could reasonably argue that the legal department perceived Kelly's behavior as an isolated incident, Demauro could not. The significance of the Kelly incident, and the "substantial risk" it presented that the Bank Secrecy Act would not be complied with, then, would be much more readily apparent to Demauro than to the legal department. Accordingly, Demauro's personal knowledge of the Kelly incident clearly was material.

* Demauro also asserts that the Campisi phone call was irrelevant to a determination of the Bank's criminal liability, because, after the phone call and his meeting with Agent Egan, Demauro took all "necessary steps" to see to it that exchanging would not occur in his branches, and therefore the Bank could not possibly be "cognizant of a substantial risk that such activities would continue after June, 1974," when the Bank Secrecy Act went into effect. (Br. 22). This argument is meritless.

The "necessary steps" to which Demauro refers was a meeting of branch heads in April 1974 at which he warned the

[Footnote continued on following page]

denial that he had spoken to Campisi about the anonymous phone call was an attempt to head off the grand jury's inquiries about the contents of that vital phone call.*

Finally, Demauro's false testimony that the anonymous caller did not link Spinelli to narcotics also was material to a determination of the Bank's criminal liability. This is so because if the anonymous caller alerted Demauro that Spinelli was linked to narcotics, just the day before Agent Egan explained the importance of the exchanging of currency to narcotics dealers and the sizeable bribes being paid bank officers to perform this service, then Demauro should certainly have been alerted to the possibility that Spinelli, who Demauro had been told was under investigation for exchanging, was actually engaged in money washing.**

---

officers not to engage in money exchanging. (Tr. 368-70). Demauro, however, made no mention at the meeting of the Bank Secrecy Act; never alerted his superiors to the information he had received about exchanging going on throughout the branches under his control; and never conducted an investigation to determine who was engaged in the exchanging. (Tr. 368-70). In short, Demauro made a brief attempt to stop the practice, but studiously avoided taking steps to uncover the wrongdoers, which, if successful, undoubtedly would have reflected badly on his past supervision of the branches under his control. The best indication of the inadequacy of Demauro's "necessary steps" is that they were ineffective.

* In this same regard, Demauro's false statements were material because they constituted an attempt to prevent the grand jury from learning that Michael Campisi, a witness in this investigation, could provide important information.

** This line of inquiry was also material to the grand jury's investigation of criminal violations by Spinelli and D'Ambrosio. See footnote on page 25, *supra*.

POINT II

Demauro's Conversations With John Martin, Esq., Were Not Privileged.

Demauro next argues that the District Court erred in permitting John Martin, Esq., to testify concerning conversations he had with the defendant. More specifically, Demauro contends that Martin, who had been retained by the Chemical Bank to conduct an internal investigation of money washing at the Bank and who questioned Demauro during that investigation, was not only the attorney for the Bank but also derivatively the attorney for the Bank's officers. Martin, the defendant argues, therefore breached the attorney-client privilege in testifying about his conversations with Demauro. This claim has no basis in law or in fact.

In mid-1975, the United States Attorney's Office advised the Chemical Bank it was the subject of a criminal investigation into the exchange of currency for narcotics dealers and violations of the Bank Secrecy Act. In September, 1975, the Bank retained John S. Martin, Jr., a former Assistant United States Attorney and Assistant Solicitor General, to represent it in the criminal investigation and to conduct an internal investigation of exchanging of currency. (Tr. 143-45).

I early October, 1975, after having questioned approximately thirty Chemical Bank employees, Martin interviewed defendant Demauro in the presence of John Wynne, the Bank's general counsel. At the outset of this meeting, Martin advised Demauro that he represented the Bank; that he was conducting an investigation for the Bank of the exchanging of currency in various branches in Northern Manhattan and the Bronx; that he had reason to believe that exchanging had occurred at a substantial number of those branches; that the Bank had not yet determined what actions would be taken as a result

of the internal investigation; that all employees were expected to cooperate in the investigation; and that if it were determined that any employee lied during the course of the investigation, this would be considered grounds for termination. (Tr. 146-47, 149).

During Martin's questioning, Demauro—as he would again do in the grand jury approximately one year later—denied, *inter alia*, that he was ever told by anyone that exchanging was going on at the Bank. (Tr. 149-53).

Within the week, Martin again questioned Demauro, this time in the presence of Mr. Murray, the Executive Vice President of the Chemical Bank. The interrogation covered much the same ground as the first meeting. Shortly thereafter, Demauro was fired. (Tr. 153-54).

Martin testified during trial that at no time did he give Demauro any reason to believe he was acting as an attorney for anyone other than the Bank. Martin further testified that he never considered Demauro his client and did not have any confidential communications with him. (Tr. 148). During defendant's testimony, Demauro acknowledged that, during his conversations with Martin, he realized that if he had admitted knowledge of exchanges of currency prior to 1975, he would likely have been fired. (Tr. 370-73).

To establish the existence of the attorney-client privilege, the following formulation must be satisfied:

> "(1) Where legal advice of any kind is sought, (2) from a professional legal adviser in his capacity as such, (3) the communication relating to that purpose, (4) made in confidence (5) by the client, (6) are at his instance permanently protected (7) from disclosure by himself or by the legal adviser, (8) except the protection be waived." *United States* v. *Kovel*, 296 F.2d 918, 921 (2d Cir. 1961), *quoting* 8 Wigmore, Evidence § 2292 (McNaughton rev. 1961).

See also *United States* v. *Stern*, 511 F.2d 1364, 1367 (2d Cir.), *cert. denied*, 423 U.S. 829 (1975). The burden of establishing all of the necessary elements is on the party claiming the privilege. *United States* v. *Stern*, *supra*, 511 F.2d at 1367; *In re Bonanno*, 344 F.2d 830, 833 (2d Cir. 1965); *United States* v. *Kovel*, *supra*, 296 F.2d at 923.

Here, the defendant utterly failed to establish the essential elements for the privilege. He has never alleged —let alone proved—that in responding to Martin's questioning, he (i) believed Martin to be his attorney; (ii) sought legal advice; or (iii) expected his responses to be kept confidential.

When Mr. Martin was asked during the trial what Demauro had said to him during the October 1975 interviews, defense counsel, interposed the following objection:

> "Mr. BELFI [defense attorney]: At this time I have to object with respect to any conversation or communication between Mr. Demauro and Mr. Martin. I think it is quite clear at this point that Mr. Martin was acting in his capacity as an attorney. We would like to invoke the privilege of any transactions or communications between client and attorney. I believe that Mr. Demauro at that time, having been an employee of the Chemical Bank, is covered under the privilege section of the exception." (Tr. 148).

Aside from this objection, the defense—which plainly had the burden of establishing all the prerequisites for the privilege—made no offer of proof. Indeed, after the Court overruled the defense objection, Mr. Martin was not even cross-examined concerning his testimony that he had not considered Demauro a client; had never given him reason to believe otherwise; and had not had confidential communications with him. (Tr. 148). Moreover, later, when the defendant took the stand, he uttered not a single

word suggesting that he had ever viewed Martin as his attorney; had sought legal advice from him; or had spoken to him in confidence.

The failure of the defense to even attempt to satisfy Wigmore's formulation is not surprising. Demauro could hardly have claimed that he believed Martin to be his attorney when at the outset of the October, 1975 interrogation, Martin specifically advised him that he was *the bank's* attorney; that he had been hired to investigate possible improper conduct in the very branches Demauro had supervised; and that the bank might well fire any employee who lied during the course of the investigation. Similarly, Demauro could not reasonably claim that in answering Martin's factual inquiries about exchanging, he believed he was obtaining legal advice, since Demauro never asked for such advice and Martin never offered any. And finally, when Martin alerted Demauro to the fact that the interrogation was in furtherance of an internal investigation, Demauro could not reasonably have believed that his statements were to be received and maintained in confidence.*

Recognizing his inability to make even a colorable argument that his meeting with Martin gave rise to a personally privileged relationship, Demauro contends that, "[t]he Bank undoubtedly would have been able to assert the privilege with regard to the October 1975 Demauro-Martin conversation . . . [and] [t]he same reasons that would permit the Bank to assert the privilege . . . require that Demauro also be permitted to assert the privilege." (Br. 30). In essence, Demauro seeks to derive a personal privilege from that of the corporation.

---

* Another indication that Demauro did not believe he was speaking to a personal attorney in confidence is the fact that he lied to Mr. Martin.

However, whatever may have been the corporation's privilege with respect to these conversations,* the case law makes clear that Demauro has no standing to invoke the corporation's privilege. See *United States* v. *Silverman*, 430 F.2d 106, 122 (2d Cir. 1970), *cert. denied*, 402 U.S. 953 (1971); *United States* v. *Bartlett*, 449 F.2d 700 (8th Cir. 1971), *cert. denied*, 405 U.S. 932 (1972); *Young* v. *Taylor*, 466 F.2d 1329 (10th Cir. 1972); *In re*

---

* A corporation such as the Chemical Bank can act only through its agents. In defining the limits of the attorney-client privilege in the corporate context, the courts have therefore been required to determine at what level of responsibility the corporate employee should reach before he is regarded as the "client." See *In re Horowitz*, 482 F.2d 72, 82 n.10 (2d Cir.), *cert. denied*, 414 U.S. 867 (1973). A variety of tests have evolved. Under one test, the corporation has a privilege with respect to any employee confidential communications to an attorney regardless of the employee's position in the corporation. See *United States* v. *United Shoe Machinery Corp.*, 89 F. Supp. 357 (D. Mass. 1950). Under a second test, which has gained considerable acceptance, a corporation has a privilege only with respect to conversations with an employee who "is in a position to control or even to take a substantial part in a decision about any action which the corporation may take upon the advice of the attorney. . . ." *City of Philadelphia* v. *Westinghouse Electronic Corp.*, 210 F. Supp. 483, 485 (E.D. Pa. 1962), *mandamus and prohibition denied sub nom. General Electric* v. *Kirkpatrick*, 312 F.2d 742 (3d Cir. 1962), *cert. denied*, 372 U.S. 943 (1963). *See generally*, Note, Attorney-Client Privilege for Corporate Clients, 84 Harv. L. Rev. 424 (1970). Still another test permits the corporation to assert the privilege when (i) the employee communicates with the attorney at the direction of superiors, and (ii) the subject matter upon which the attorney's advice is sought relates to the employee's corporate duties. *Harper & Row Publishers, Inc.* v. *Decker*, 423 F.2d 487, 490-91 (7th Cir. 1970), *aff'd memo. by equally divided Court*, 400 U.S. 955 (1971). *See generally*, J. Weinstein and M. Berger, Evidence ¶ 503(b)[04], at 503-40 to 503-44 (1975).

It seems to us that under the above-described second test, the Bank would not have the right to assert the privilege, since no one has ever suggested that Demauro was in a position to contribute to any corporate decisions taken as a result of Mr. Martin's internal investigation.

Grand Jury Subpoena Duces Tecum, 391 F. Supp. 1029, 1034 (S.D.N.Y. 1975); *In re Grand Jury Subpoena Duces Tecum*, 77 C. 1075, at 11 (E.D.N.Y., Aug. 3, 1977) (Neaher, J.); *In re Grand Jury Proceeding (Jackier)*, 46 U.S.L.W. 2107 (E.D. Mich., Aug. 2, 1977). These cited cases simply stand for the unexceptional proposition that a claim of privilege can only be made by the person or entity whose privilege it is. The party against whom the testimony is admitted has no standing, absent a personal privilege, to assert the benefits of the privilege. See 8 Wigmore, Evidence, *supra*, § 2196, at 111.

Thus, in *United States* v. *Silverman*, *supra*, 430 F.2d 106, this Court affirmed a conviction based in part upon evidence of an attorney's report to a union on the condition of the union's internal documents. The evidence was received notwithstanding an objection by the defendant, the president of the union, that *his* attorney-client privilege was being violated. In holding that the attorney's report contained no privileged confidential information from the client, the Court, recognizing that the defendant would have no standing to assert the corporation's privilege unless he had a personal attorney-client relationship, suggested an alternative basis for permitting the report into evidence:

> "Nor do we need to make a finding, which the trial court failed to make as to whether Friedland was the attorney of Local 810 and not of Silverman, therefore leaving *Silverman without standing to assert error in the ruling by the trial judge.* 8 Wigmore, Evidence § 2321 (McNaughton rev. ed. 1961) McCormick, Evidence § 96, at 196 (1954)." 430 F.2d at 122 (emphasis added).

Similarly, in *United States* v. *Bartlett*, *supra*, 449 F.2d 700, the Eighth Circuit, as an alternative basis for affirming a conviction based in part upon the testimony

of the corporation's attorney against the corporation's chief executive officer, held that the "defendant has failed to establish that the attorney-client relationship existed between him and Parker at the time of the alleged disclosure. The relationship established was between the attorney and the corporation." *Id.* at 704. *Accord*, *Young* v. *Taylor*, *supra*, 466 F.2d 1329; *In re Grand Jury Subpoena Duces Tecum*, *supra*, 391 F. Supp. at 1034; *In re Grand Jury Subpoena Duces Tecum*, *supra*, 77 C. 1075, at 11; *In re Grand Jury Proceedings* (*Jackier*), *supra*, 46 U.S.L.W. at 2108 ("If [the communicating officer] makes it clear when he is consulting the company lawyer that he personally is consulting the lawyer and the lawyer sees fit to accept the communication knowing the possible conflicts that could arise, he may have a privilege. But in the absence of any indication to the company's lawyer that the lawyer is to act in any other capacity than as lawyer for the company in giving and receiving communications from control group personnel, the privilege is and should remain that of the company and not that of the communicating officer." *Id.* at 2108).

Not only is the derivative privilege for which Demauro argues unprecedented, we submit it would also be extremely unwise to confer it. If attorneys representing corporate clients were automatically to become the personal attorney for persons such as Demauro simply by virtue of the employee's position with the corporation, the resultant conflicts of interest would put an end to internal investigations by lawyers. For example, in this case, Mr. Martin, as attorney for both the corporation and Demauro, would have been faced with such ethical conflicts as whether he should communicate Demauro's statements to other bank officials; whether he should reveal to other bank officials other bank witnesses who he had learned contradicted Demauro's version of the facts; and whether he should reveal to bank officials his views about Demauro's truthfulness.

One final observation is necessary to place this claim in its proper context. The Bank itself, to the extent it had a privilege in this case, was free to exercise it. It chose not to do so and instead permitted its attorney to testify to his conversations with Demauro. It would be ironic in the extreme to allow Demauro to assert a privilege which exists to protect the Bank by fostering candid communications, where the Bank has no desire to have the communications protected and where the employee's communications were not at all candid but were of the same sort that led to his conviction for perjury.*

POINT III

Demauro's Responses Were Not Literally True.

Demauro's final claim is that the grand jury questioning was not sufficiently specific to warrant his conviction under *Bronston* v. *United States*, 409 U.S. 352 (1973), which holds that literally true responses do not constitute perjury. This claim is entirely without merit.

The law is well-settled that while literally true responses will not be treated as perjurious, "[a]bsent fundamental ambiguity or impreciseness in the questioning,"

---

* It should also be noted that any error was surely harmless. There was overwhelming evidence in this case that Demauro's testimony was false. Mr. Martin's testimony was offered solely to establish a motive for the perjury by showing that Demauro had given the same false version of the facts to Mr. Martin in an attempt to protect his job. However, Mr. Martin's testimony was not necessary to establish the fact that the defendant had a motive to lie. Demauro himself had supplied all the proof that was needed when he filed a $10.5 million lawsuit just prior to his grand jury appearance, claiming that he had been unjustifiably fired. Indeed, the District Court found that it was this lawsuit alone supplied all of the needed proof of motive. (App. 62a-63a).

the meaning and truthfulness of a defendant's answers are for the factfinder. *United States* v. *Bonacorsa*, 528 F.2d 1218, 1221 (2d Cir.), *cert. denied*, 426 U.S. 935 (1976). See also *United States* v. *Wolfson*, 437 F.2d 862, 878 (2d Cir. 1970), and cases there cited. So long as there is a meeting of the minds on the part of the questioner and witness and the resultant testimony is materially false, that is sufficient to establish perjury. *United States* v. *Long*, 534 F.2d 1097, 1100 (3d Cir. 1976); *United States* v. *Chapin*, 515 F.2d 1274, 1280 (D.C. Cir.), *cert. denied*, 423 U.S. 1015 (1975); *United States* v. *Paolicelli*, 505 F.2d 971, 973 (4th Cir. 1974).

Before turning to the individual questions and answers which Demauro claims do not satisfy the dictates of *Bronston*, it should be noted that Judge Tenney, having presided over the trial in the *Bronston* case, was particularly sensitive to its requirements. (Tr. 298). Indeed, pursuant to the dictates of *Bronston* the Judge found that a number of Demauro's responses charged as perjurious were not because literally true (though in some instances "evasive"). (App. 52a, 55a).

A. Answer [1]

In response to a question about when he first "learned" of money washing, Demauro testified, "[p]robably in September of '75." Demauro first argues that the word "[p]robably" precluded a conviction under *Bronston*, because "the examining prosecutor could, by posing one additional question, have required Demauro to make his ambiguous answer more precise." (Br. 35-36). The simple answer to this assertion is that Judge Tenney found nothing ambiguous about the response. He found that "the entire fabric of the defendant's testimony at trial revealed a concerted and continuous effort to give false testimony . . ." and that "[t]he evidence . . . leads to the inescapable conclusion that Demauro was informed of money-washing as early as 1968 and thereafter on a

number of occasions." (App. 57a). Thus, when Demauro testified that he "probably" first learned of money washing in September 1975, there was nothing ambiguous or literally true about the response; it was, as Judge Tenney found, an outright falsehood.*

Demauro next argues that the response was literally true because he could not have "learned" of exchanging from the conversations he had with either Kelly, Woop, Campisi or Egan. With respect to what Kelly told him, Demauro argues that he did not "learn" of exchanging because "[w]hatever knowledge Demauro may have had in 1973 regarding Kelly's activities in 1969, having referred Kelly to the Chemical legal department, he could not be said to have 'learned that money-washing . . . was going on at the Chemical Bank' on that date." (Br. 40). The illogic of this argument supplies its own answer. As Judge Tenney found, the proof showed that in 1973 Kelly advised Demauro of his exchanging. (App. 55a-56a). Demauro's claim that he did not learn from Kelly of the exchanging simply because Kelly also advised a member of the legal department of his exchanging is beguiling.

Demauro's claim that he did not "learn" of exchanging at the Bank as a result of Campisi's and Woop's conversations with him is also unconvincing. Demauro argues that because these two men told him that their information about exchanging was based on rumor and hearsay, he could not have "learned" of exchanging from them. During his trial testimony, Demauro never once suggested that when he appeared before the grand jury, he

---

* To the extent there existed any possible doubt about how Demauro wished to be understood in answering this question, he surely eliminated it when he testified on direct examination in response to exactly the same question asked of him in the grand jury, "A. In September, 1975," eliminating the word "probably." (Tr. 325-26).

was involved in some sort of metaphysical struggle to understand the meaning of the verb "to learn," and that therefore his response was tempered by his misunderstanding of what the questioner had in mind. On the contrary, the whole fabric of his testimony was directed at denying that he had ever possessed any knowledge of exchanging at the Bank prior to 1975. The possibility of varying interpretations by Demauro of this question simply required Judge Tenney as the fact-finder to determine how Demauro understood the question, and Judge Tenney resolved this issue against the defendant. *United States* v. *Alberti*, Dkt. No. 76-1543, slip op. 5505, 5517 (2d Cir., Aug. 24, 1977); *United States* v. *Bonacorsa*, *supra*, 528 F.2d at 1221; *United States* v. *Chapin*, *supra*, 515 F.2d at 1280; *United States* v. *Wolfson*, *supra*, 437 F.2d at 878.

B. Answers [2] and [3]—The Anonymous Phone Call

Demauro does not appear to argue—as he could not fairly do—that answers [2] and [3] were not false. (Br. 39). Rather, he argues that under *Bronston*, the prosecutor was obliged to go beyond the two false answers and ask still a more specific question about whether the anonymous caller had mentioned a connection between Spinelli and narcotics.* The *Bronston* decision

---

* Demauro's trial testimony puts to rest any claim that he would have testified that the anonymous caller mentioned Spinelli's connection with narcotics if given an opportunity to do so through more specific questioning:

> "Q. You were asked these questions [in the grand jury] and you gave these answers.
>
> 'Q. Had you received an anonymous phone call concerning Mr. Spinelli about that time?'
>
> 'A. Yes, I did.'

[Footnote continued on following page]

has never, to our knowledge, been extended to require the questioner to ask the most specific question possible. Certainly, the defense cites no such case,* and the cases we have found indicate the contrary. All that is required is that there be a meeting of the minds on the part of the questioner and witness. *United States* v. *Corr*, 543 F.2d 1042, 1049 (2d Cir. 1976); *United States* v. *Long*, *supra*, 534 F.2d at 1101; *United States* v. *Chapin*, *supra* 515 F.2d at 1280; *United States* v. *Paolicelli*, *supra* 505 F.2d 971.

As this Court observed in *United States* v. *Albergo*, 539 F.2d 860, 864 (2d Cir. 1976), where the questions were certainly no more specific than here, "[t]o a person predisposed to answer truthfully, the questions were clear." See also *United States* v. *Wolfson*, *supra*, 437 F.2d at 876-78. We submit, as Judge Tenney found, that this observation is equally applicable to Demauro.

'Q. What did the caller say?'

'A. To the best of my recollection, just "I have a relative who works in Internal Revenue. Your Mr. Spinelli is under investigation." That was the end of the call.'

'Q. And nothing more was said?'

'A. Not on that call, no.'

Q. Were those your answers to those questions?

A. Yes.

Q. You maintain today that those answers are truthful; correct?

A. I do.

Q. It is your testimony that the anonymous caller mentioned nothing about Spinelli being involved in narcotics; correct

A. That is correct.

Q. That was precisely what you were saying in the Grand Jury; correct?

A. Yes." (Tr. 333-34).

* *United States* v. *Lattimore*, 215 F.2d 847, 849-50 (D.C. Cir. 1954), cited by Demauro, involved "extreme questions which were both vague and highly charged with First Amendment problems." *United States* v. *Chapin*, *supra*, 515 F.2d at 1279. That is not the case here.

C. Answers [4]-[6]—The Kelly Incident

Again, Demauro does not contend that answers [4]-[6] were truthful, but rather that, "the prosecutor was required to direct the defendant's attention more precisely to the specific activities of Kelly that he wished to inquire about." (Br. 40). Again, this unprecedented argument is unadorned with legal citations. The suggestion that after the defendant had three times wilfully perjured himself about the Kelly incident, the prosecutor was obliged to continue to ask more and more specific questions is quite absurd.

D. Answers [7]-[13]—The Campisi Conversation.

With respect to answers [8]-[11],* Demauro argues that since Campisi told him that his knowledge that money washing was going on in the Bronx and possibly Northern Manhattan was based on "hearsay information" and "scuttlebutt," "Demauro's testimony that he discussed money-exchanging only in general terms . . . was correct." (Br. 44). This argument reflects a reading of the testimony with "the partisan eye of an advocate." *United States* v. *Bonacorsa*, *supra*, 528 F.2d at 1221. In these four responses, Demauro denied that anyone at the Bank told him in 1974 that washing was going on and also denied that he had ever asked whether it was going on. As Judge Tenney found, this testimony was directly and unequivocally contradicted by Michael Campisi and his wife. Under no circumstances can these responses be found to be true in light of Judge Tenney's factual findings that the Campisis were telling the truth and Demauro was not. (App. 53a-54a).

---

* Demauro does not even suggest how answers [7], [12] or [13] can be viewed as anything but perjurious, since he offers no explanation how *Bronston* can excuse these falsehoods.

CONCLUSION

The judgment of conviction should be affirmed.

Respectfully submitted,

ROBERT B. FISKE, JR.,
United States Attorney for the Southern District of New York, Attorney for the United States of America.

LAWRENCE B. PEDOWITZ,
ROBERT J. JOSSEN,
Assistant United States Attorneys,
Of Counsel.

★ U. S. Government Printing Office 1978— 714-059-732

AFFIDAVIT OF MAILING

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

Lawrence B. Pedowitz, being duly sworn, deposes and says that he is employed in the office of the United States Attorney for the Southern District of New York.

That on the 24th day of January, 1978, he served a copy of the within brief by placing the same in a properly postpaid franked envelope addressed:

Shea Gould Climenko & Casey
330 Madison Ave
NY, NY 10017

And deponent further says that he sealed the said envelope and placed the same in the mail box for mailing at One St. Andrew's Plaza, Borough of Manhattan, City of New York.

Lawrence B Pedowitz

Sworn to before me this
24th day of January, 1978.

Jeanette Ann Graves

JEANETTE ANN GRAVES
Notary Public, State of New York
No. 24-1541575
Qualified in Kings County
Commission Expires March 30, 1979